



REMARKS

I. PENDING CLAIMS AND SUPPORT FOR AMENDMENTS

Upon entry of this amendment, claims 88-94 will be pending in this application. Applicants have amended claim 88 to exclude the compound D-fructopyranose β -1,3,4,5-tetraacetate. Applicants have amended claims 92 and 93 to place them into independent form. No new matter has been added.

II. FINALITY OF OFFICE ACTION

The Office action summary indicates that the Office action is non-final, however, paragraph 7 of the Office action indicates that the Office action is made final. Applicants presume that paragraph 7 is in error, and that the Office action summary is correct. Accordingly, Applicants' amendments should be entered and considered in this application.

III. OBJECTION TO CLAIMS 92 AND 93

In paragraph 2 of the Office action, the Examiner has objected to claims 92 and 93 as being of improper dependent form for failing to limit claim 88, from which they depend. While Applicants do not agree with the Examiner's characterization of the situation (both claims define Markush groupings for the R substituents that do not include acetyl, and therefore do not expand the scope of claim 88), because the claims have been indicated to be otherwise allowable, Applicants have rewritten them in independent form. Accordingly, the Examiner's objection should be withdrawn.

IV. THE ANTICIPATION REJECTION OVER NODA ET AL.

In paragraph 3 of the Office action, the Examiner has rejected claims 88, 90, and 91 as anticipated by Noda et al. under 35 U.S.C. § 102(b). Applicants

respectfully traverse this rejection and request reconsideration and withdrawal thereof.

Claim 88 excludes the compound D-fructopyranose β -1,3,4,5-tetraacetate. Accordingly, Noda et al. does not anticipate claim 88 or any of its dependent claims. Moreover, since the compound D-fructopyranose β -1,3,4,5-tetraacetate is only disclosed in Noda et al. as a starting material to make a specified product, there would not have been any motivation to modify the compound in such a way as to obtain a compound within the scope of claim 88.

V. WITHDRAWAL OF NONELECTED SPECIES

With respect to the Examiner's continued maintenance of the restriction requirement, Applicants continue to disagree with the Examiner's interpretation of MPEP § 803.02. The Examiner has rather creatively interpreted the permissive "may" language relating to provisional election in MPEP § 803.02 as permitting her to restrict within a claim and withdraw parts of that claim from consideration. Applicants respectfully submit that this interpretation is at odds with the established case law cited in Applicants' previous responses, as well as with established Patent Office procedure.

MPEP § 803.02 describes the procedure that is to be followed when patentably distinct inventions are found within a single claim. The permissive "may" is to be interpreted as allowing the Examiner to require a provisional election as opposed to examining the entire claim on its merits, not as an alternative, should the Examiner feel generous, to withdrawing a portion of the claim. Nothing in the MPEP authorizes the Examiner to ignore the holdings in *In re Haas* and *In re Weber*, which the

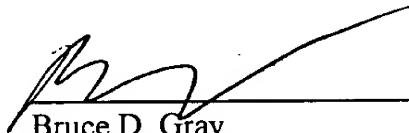
Examiner has done by withdrawing the bulk of claim 88 from examination on the merits. Now that claim 88 is allowable with respect to the elected species, Applicants respectfully submit that the Examiner is obligated by both the cited cases, MPEP § 803.02, and established Patent Office procedure, to expand the scope of examination of claim 88 to the extent necessary to determine its patentability.

Applicants respectfully submit that the present claims are in condition for immediate allowance. An early notification thereof is earnestly solicited.

If the Examiner has any questions or comments about this application or about the invention, or if further issues remain to be resolved, she is invited to contact the undersigned at 404.815.6218 prior to the issuance of any final rejection.

The Commissioner is hereby authorized to charge any deficiencies or credit any overpayment to Deposit Order Account No. 11-0855.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Bruce D. Gray', is written over a horizontal line.

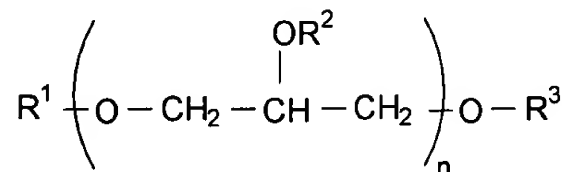
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MARKED UP COPY OF AMENDED CLAIMS

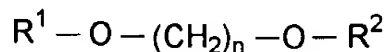
88. (Twice Amended) A compound having a structure selected from the group consisting of:

II:



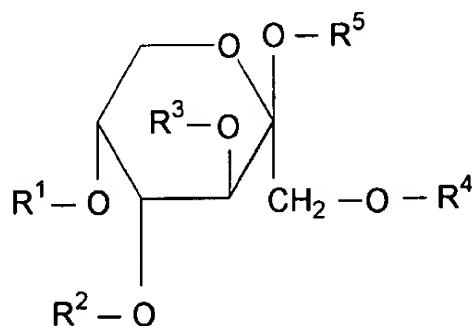
wherein R^1 , R^2 , and R^3 are independently selected from the group consisting of hydrogen, alkanoyl having 2 to 6 carbons, hydroxy-substituted alkanoyl having 2 to 6 carbons, and acyloxy-substituted alkanoyl having 2 to 6 carbons, wherein n is between 1 and 20, and wherein at least one of R^1 , R^2 , and R^3 is other than hydrogen;

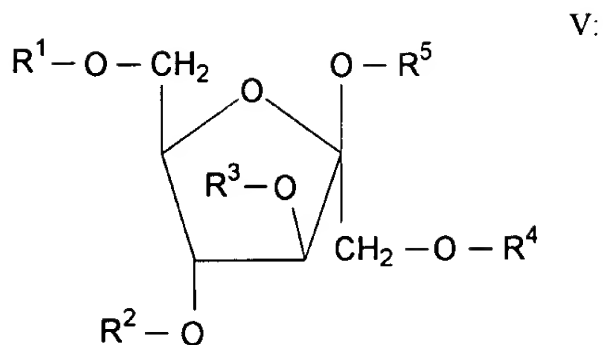
III:



wherein n is an integer between 4 and 8, and R^1 and R^2 are independently selected from the group consisting of hydrogen, alkanoyl having 2 to 6 carbons, hydroxy-substituted alkanoyl having 2 to 6 carbons, and acyloxy-substituted alkanoyl having 2 to 6 carbons, and wherein at least one of R^1 and R^2 is other than hydrogen;

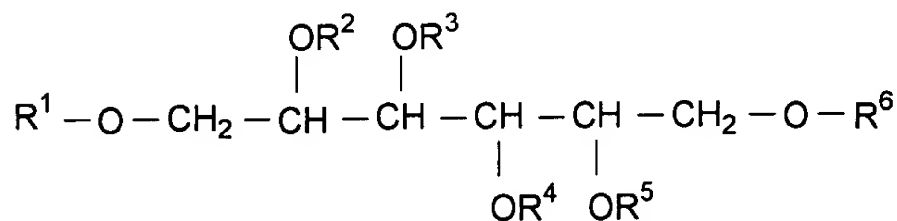
IV:



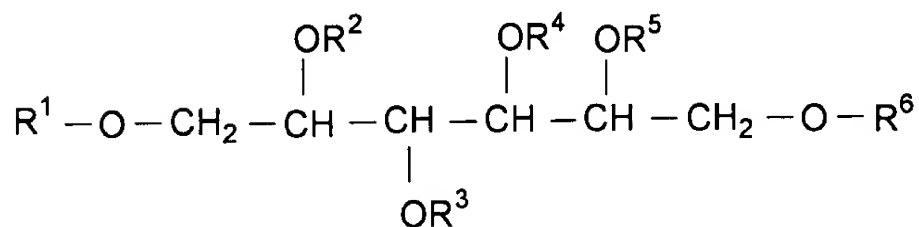


wherein R^1 , R^2 , R^3 , R^4 , and R^5 are independently selected from the group consisting of hydrogen, alkanoyl having 2 to 6 carbons, hydroxy-substituted alkanoyl having 2 to 6 carbons, and acyloxy-substituted alkanoyl having 2 to 6 carbons, and wherein at least one of R^1 , R^2 , R^3 , R^4 , [and] R^5 is not hydrogen and is not acetyl, and wherein when R^5 is hydrogen, at least one of R^1 , R^2 , R^3 , and R^4 is not acetyl;

VI:

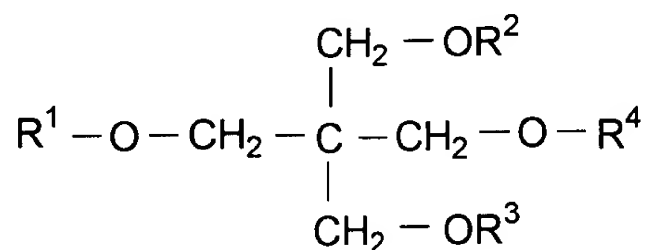


VII:



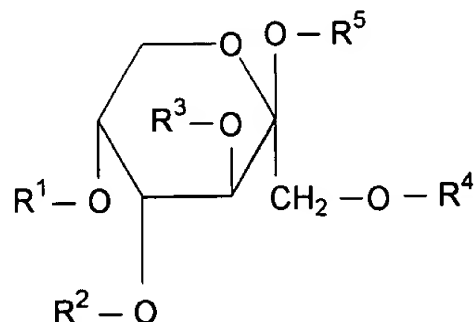
wherein R^1 , R^2 , R^3 , R^4 , R^5 , and R^6 are independently selected from the group consisting of hydrogen, alkanoyl having 2 to 6 carbons, hydroxy-substituted alkanoyl having 2 to 6 carbons, and acyloxy-substituted alkanoyl having 2 to 6 carbons, and wherein at least one of R^1 , R^2 , R^3 , R^4 , R^5 , and R^6 is other than hydrogen;

VIII:



wherein R^1 , R^2 , R^3 , and R^4 are independently selected from the group consisting of hydrogen, alkanoyl having 2 to 6 carbons, hydroxy-substituted alkanoyl having 2 to 6 carbons, and acyloxy-substituted alkanoyl having 2 to 6 carbons, and wherein at least one of R^1 , R^2 , R^3 , and R^4 is other than hydrogen.

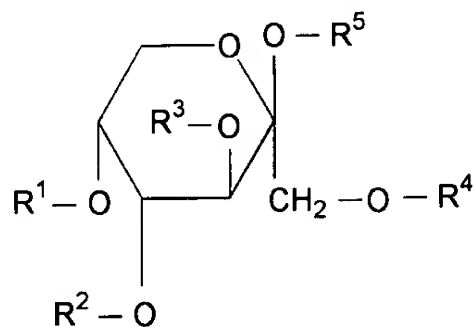
92. (Amended) [The] A compound [of claim 88,] having structure: [IV, and]



wherein R^1 , R^2 , R^3 , R^4 , and R^5 are independently selected from the group consisting of hydrogen, alkanoyl having 2 to 6 carbons, hydroxy-substituted alkanoyl having 2 to 6

carbons, and acyloxy-substituted alkanoyl having 2 to 6 carbons, and wherein at least one of R^1 , R^2 , R^3 , R^4 , and R^5 is not hydrogen, and is not acetyl.

93. (Amended) [The] A compound [of claim 88,] having structure: [IV, and]



wherein R^1 , R^2 , R^3 , R^4 , and R^5 are independently selected from the group consisting of hydrogen, alkanoyl having 2 to 6 carbons, hydroxy-substituted alkanoyl having 2 to 6 carbons, and acyloxy-substituted alkanoyl having 2 to 6 carbons, and wherein at least one of R^1 , R^2 , R^3 , R^4 , and R^5 is hydroxy-substituted alkanoyl.